

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DEREK HOLLOWAY,

Plaintiff,

v.

ITT EDUCATIONAL SERVICES, INC.,

Defendant.

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CIVIL ACTION NO. _____

NOTICE OF REMOVAL

ITT Educational Services, Inc., (“ITT/ESI”), Defendant in the above-captioned matter (“Defendant”), removes this action from the 125th Judicial District Court of Harris County, Texas, to the United States District Court for the Southern District of Texas, Houston Division. Removal is on the following ground:

I.

The Original Petition in this action was served on ITT/ESI’s registered agent for service of process on April 23, 2013. This Notice of Removal is filed within 30 days of receipt by Defendant ITT/ESI of Plaintiff’s Original Petition. *See* 28 U.S.C. § 1446(b).

II.

Defendant is a Delaware Corporation with its principal place of business in Indiana. As indicated in Plaintiff’s Original Petition, Plaintiff is a resident of Harris County, Texas. Therefore, this Court has original jurisdiction of this action under the provisions of 28 U.S.C. §§

1332(a)(1) and (c)(1) based on the diversity of citizenship of the parties where the amount in controversy exceeds \$75,000.00.¹ Accordingly, this case is removable under 28 U.S.C. § 1441.

III.

Venue lies in the Southern District of Texas, Houston Division, because the state action filed by Plaintiff was filed in this judicial district and division. *See* 28 U.S.C. § 1441(a).

IV.

A copy of all process, pleadings and orders served upon Defendant are attached as Exhibits 1-4 to this Notice.

V.

On or about May 8, 2013, Defendant will give notice of the filing of this Notice of Removal to the 125th Judicial District Court of Harris County, Texas, and to all parties of record through their attorneys. *See* 28 U.S.C. § 1446(d).

WHEREFORE, Defendant ITT Educational Services, Inc., hereby removes Cause No. 2013-20400 from the 125th Judicial District Court of Harris County, Texas to this court for trial and determination, and prays that all further proceedings in state court will be stayed.

¹ Plaintiff does not state in his Petition the amount he is seeking to recover, but he specifically alleges that he is seeking back pay, front pay, lost benefits, compensatory damages, punitive damages, and attorneys' fees. *See* Petition at page 3. Based on this information, it is clear that Plaintiff is seeking damages in excess of \$75,000.00.

Respectfully submitted,

/s/ Michael D. Mitchell

Michael D. Mitchell

State Bar No. 00784615

Federal ID No.: 15330

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

One Allen Center

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ATTORNEY-IN-CHARGE FOR DEFENDANT
ITT EDUCATIONAL SERVICES, INC.

OF COUNSEL:

Aimee Blanchard Parsons

State Bar No. 24036229

Federal ID No. 1276929

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713.655.0855

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May, 2013, a true and correct copy of the above and foregoing instrument was forwarded to in accordance with the Federal Rules of Civil Procedure:

Craig R. Keener
1005 Heights Boulevard
Houston, Texas 77008

/s/Michael D. Mitchell

Michael D. Mitchell

**INDEX OF MATTERS BEING FILED
WITH DEFENDANT' NOTICE OF REMOVAL**

1. Plaintiff's Original Petition along with the Notice of Service of Process (Exhibit 1);
2. Defendant's Original Answer (Exhibit 2)
3. The docket sheet (Exhibit 3); and
4. A list of all counsel of record, including addresses, telephone numbers and parties represented (Exhibit 4).

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